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C O N F I D E N T I A L SECTION 01 OF 03 PRETORIA 000189

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SUBJECT: CONSTITUTIONAL PROVISIONS FOR REMOVING SITTING  
PRESIDENT

REF: PRETORIA 0169

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Classified By: Deputy Chief of Mission Donald Teitelbaum. Reasons 1.4(b) and (d).

11. (C) SUMMARY and INTRODUCTION. Since Jacob Zuma won the ANC Presidency in late December 2007, speculation among ANC members, political analysts, and the media has been rife about how long South African President Thabo Mbeki will remain in office. Mbeki's second and final five-year term ends in April 2009; therefore, national parliamentary elections are expected in the March/April timeframe. Thus far, no one from either Mbeki or Zuma's camp has publicly mentioned the idea of hastening Mbeki's departure and we have received private assurances that Zuma has no interest in pushing Mbeki out. Nevertheless, the rumors persist and the opposition is getting into the act with the ID threatening its own no confidence motion in reaction to recent rolling power cuts (septel). To help Washington observers distinguish plausible scenarios from cocktail party gossip, this message details the methods defined in the South African Constitution by which a sitting president may be removed from office: (1) the National Assembly may pass a resolution removing the president for serious misconduct, breach of law, or inability to perform; (2) the National Assembly may pass a resolution indicating no confidence in the President; (3) the National Assembly may vote to dissolve Parliament and hold new elections; or, (4) President Mbeki may resign. END SUMMARY and INTRODUCTION.

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CONSTITUTIONAL PROVISIONS FOR REMOVAL OF SITTING PRESIDENT  
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12. (SBU) One of the authors of the South African Constitution, Professor Marinus Wiechers, explained to PolOff on 24 January that the Constitution gives the National Assembly (the lower house of parliament) three options for removing a sitting president before his/her term expires:

-- Option A: Article 50.1 provides that if the National Assembly passes a resolution to dissolve by a vote of the majority of its members (i.e. 201 of 400 MPs) the President must dissolve the body and call for new National Assembly elections to be held within 90 days. The only restriction is that this is not done within the first three years of the Assembly's five-year term. (NOTE: The current National Assembly was elected and first convened in April 2004. END

NOTE).

-- Option B: Article 89 provides for the removal from office of a President by a vote of at least two-thirds of the 400 National Assembly members. Though not officially called "impeachment," use of this measure is restricted to the following grounds: (a) a "serious violation" of the Constitution or law; (b) "serious misconduct"; or (c) inability to perform the functions of office. The National Assembly has 30 days following removal of the President on the above grounds in which to elect a new president from among its members. If it fails to do so within this timeframe, Article 50.2 provision requires the Acting President (NOTE: determined by Constitutionally-defined order of precedence) to dissolve the National Assembly and call for new elections to be held within 90 days.

-- Option C: Article 102.2 provides that if a majority of members of the National Assembly (i.e. 201 of 400 MPs) passes a motion of no confidence in the President then the President, Deputy President, Cabinet and all Deputy Ministers must resign. As in the case of Option B, the National Assembly would have 30 days to elect a new President from among its member, who would in turn select his/her Deputy President, Cabinet, etc. (NOTE: Art. 102.1 gives the National Assembly the option to pass a vote of no confidence in only the Cabinet, in which case the President would reconstitute Cabinet. END NOTE)

13. (SBU) In addition to these three options for removal of the President, the President may resign voluntarily at any time. In that case, the National Assembly would have 30 days to elect a new President from among its members. If it fails to do so, the Acting President would be required to dissolve the body and call for new National Assembly elections to be held within 90 days.

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14. (C) Raenette Taljaard, Director of the Helen Suzman Foundation and former opposition MP, told PolOff on 24 January that current Speaker of the National Assembly (and new ANC Chairperson) Baleka Mbete, whom she described as "nasty and unfair," would play a pivotal role in any parliamentary push to remove Mbeki by ensuring that every MP knew she was keeping tabs on them and reporting directly to ANC headquarters at Luthuli House.

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VOTE OF NO CONFIDENCE MOST WORKABLE  
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15. (C) Of the constitutional options described above, both Wiechers and Taljaard viewed Option A as the most unlikely. Taljaard's assessment is based on the fact that many MPs would essentially be voting themselves out of a job. She also added that a vote for dissolution would be viewed as a tacit admission that MPs have failed. Wiechers takes a different viewpoint, pointing out that a dissolution vote would be an extremely divisive act that could potentially tear the ANC apart and force Mbeki-ites to form their own political party.

16. (C) Option B also has been dismissed by most analysts, including Wiechers, as unlikely. Mbeki's popularity has certainly fallen over the past couple of years, as evidenced by his loss in Polokwane, but Mbeki has always been careful to ensure that his decisions, especially the more unpopular ones, are taken within the parameters of the law. He also has not been accused of serious misconduct, even by his most vociferous critics.

17. (C) Wiechers and Taljaard therefore view Option C as the most viable avenue for removal of Mbeki should the Zuma camp choose to pursue such a course of action. They believe

Mbeki's removal and a Cabinet overhaul would provide Zuma's camp "forward cover" against the possibility that Zuma's ongoing corruption trial or other circumstances prevent Zuma from assuming the Presidency in 2009. It would also eliminate the internal ANC problem of having two competing centers of power within the party. (COMMENT: It would also give the more rabid Zuma supporters the most satisfaction. The Zuma camp has never hid its disdain for the majority of cabinet members and voted most cabinet members out of the National Executive Committee at Polokwane. END COMMENT)

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MBEKI RESIGNATION?  
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18. (C) While media speculation has not focused on President Mbeki's right to resign, Taljaard believes this option should not be completely discounted as Mbeki is prone to "fits of pique." She argued that Mbeki is "impetuous and vindictive and has nothing to lose since he cannot run again." Portraying Mbeki as somewhat of an egomaniac, she wondered how much of Zuma's party leadership Mbeki can take, saying being out of the limelight bothers him. She cited Mbeki's carefully orchestrated statement on the state's intention to indict National Police Commissioner Selebi, released on the same day Zuma gave his state of the nation speech, as an example of Mbeki's intention to draw attention away from Zuma.

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COMMENT  
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19. (C) At the moment, this is all armchair strategizing. Parliament has not started its 2008 session yet, and we have seen no indication President Mbeki intends to resign any time soon. Zuma's camp has had some harsh words for Mbeki and his followers about consequences if they do not implement ANC policies fast enough, but the rhetoric thus far has been seen as more bluster than threat. Removal of Mbeki via a no-action motion requires either subsequent election of his successor from among sitting National Assembly members or new National Assembly elections. Yet neither Zuma nor new ANC Deputy President Motlanthe currently holds a seat in the Assembly and the party shows no signs of gearing up for early elections. Talk of placing Motlanthe, and only Motlanthe, into a cabinet position (reftel) is a less drastic measure

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that could provide a bridge between the two centers of power.

If the Zuma camp ultimately maneuvers to orchestrate National Assembly action -- not impossible if Zuma's supporters continue to feel snubbed by Mbeki -- National Assembly Speaker (and new ANC Chairperson) Baleka would likely play a key role and bears watching.

BOST